

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, December 14, 2011, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Robert Bartholomew
Tom Day
Walter Schmidt
Nancy Bonniwell
Richard Bayer

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Sheri Lieftring, Senior Land Use Specialist
Lawrence Menning, BA11:043, neighbor
Tim Seidel, BA11:045, architect
Brett Zynski, BA11:045, agent
Kyle Kohlmann, BA11:043, architect
Bill Brooks, BA11:044, petitioner
Robert Buchta, BA11:044, builder
Don Murn, BA11:043, attorney
Mike Doble, BA11:044 & BA11:045, Town representative

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I make a motion to approve the Summary of the Meeting of November 9, 2011.*

The motion was seconded by Mr. Bayer and carried unanimously.

NEW BUSINESS:

BA11:035 VINCENT AND CHRISTA SUTER:

Mr. Schmidt *I make a motion to approve the request for after-the-fact variances from the shore and floodplain setback requirements to permit the patio to remain, approve the requested variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements, and approve the requested variance from the floor area*

ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, with the following conditions and for the following reasons:

- 1. The owner must obtain a Zoning Permit for the patio within 30 days of the recording of the Board's Decision.*
- 2. No expansion of the building footprint is permitted. The total square footage of the first and second floors of the residence, detached garage, any covered decks, covered patios and/or covered porches, etc, shall not exceed 22.3% of the lot area.*
- 3. The proposed second story addition shall not exceed 898 sq. ft. and shall remain within the footprint of the existing residence. This includes any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.*
- 4. Prior to the issuance of a Zoning Permit, a detailed time and materials cost estimate of the construction must be submitted to Planning and Zoning Division Staff.*
- 5. Prior to the issuance of a Zoning Permit, two (2) complete sets of building plans for the proposed addition (and any proposed work to the garage), in conformance with all conditions must be submitted to the Planning and Zoning Division staff for review and approval. Please note that depending on the cost, any proposed work to the garage may require additional variances.*
- 6. If any changes are proposed to the garage, prior to the issuance of a Zoning Permit, five (5) copies of an updated Plat of Survey showing all existing structures and the staked-out location of the altered garage, in conformance with all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*

Reasons: It is reasonable to grant the necessary variances to allow the patio to remain as it is the same size and configuration as the former patio. With regards to the second story addition, it would be aesthetically and structurally a burden to change the design of the proposed addition due to the layout of the existing residence. The addition will not change the footprint of the structure. It would also be

unnecessarily burdensome to require a reduction in the size of the garage due to its close proximity to the waterway. The concern is that any work that close to the shoreline would cause damage to the waterway. The proposed residence fits in with the neighborhood. This approval provides a reasonable use of the property that is not unnecessarily burdensome and will permit an addition and remodeling to the residence that is not detrimental to the surrounding neighborhood or contrary to the public interest and will also allow the owners to retain the patio. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

The motion was seconded by Mr. Day and carried 4-1. Ms. Bonniwell voted against the motion.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for after-the-fact variances from the shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the patio to remain, **approval** of the requested variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements, and **denial** of the requested variance from the floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of a second story addition, subject to the following conditions:

1. The owner must obtain a Zoning Permit for the patio within 30 days of the recording of the Board's Decision.
2. The property shall remain in compliance with the floor area ratio requirements of the Ordinance. The owner can accomplish this by reducing the size of the addition or reducing the size of the detached garage.
3. The proposed addition shall remain within the footprint of the existing residence. This includes any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.
4. If the owner chooses to remove a portion of the detached garage to allow for a larger addition to the residence, the remaining garage shall be a minimum of 400 sq. ft. in size.
5. Prior to the issuance of a Zoning Permit, a detailed time and materials cost estimate of the construction must be submitted to Planning and Zoning Division Staff.
6. Prior to the issuance of a Zoning Permit, two (2) complete sets of building plans for the proposed addition (and any proposed work to the garage), in conformance with all conditions must be submitted to the Planning and Zoning Division staff for review and approval. Please note that depending on the cost, any proposed work to the garage may require additional variances.

7. If any changes are proposed to the garage, prior to the issuance of a Zoning Permit, five (5) copies of an updated Plat of Survey showing all existing structures and the staked-out location of the altered garage, in conformance with all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It is reasonable to grant the necessary variances to allow the patio to remain as it is the same size and configuration as the former patio. With regards to the second-story addition to the residence, it has not been demonstrated, as required for a variance, that denial of the requested floor area ratio variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Strict adherence to the district regulations does not prevent a reasonable use of the property. The zoning district only requires a minimum lot size of 14,000 sq. ft. (when sewer is available) and this property is 15,481 sq. ft. The property is conforming to lot size and therefore there is no justifiable reason why the floor area ratio requirement cannot be met. The fact that the residence does not have a basement is a function of living in a floodplain area. None of the residences in this general area of Lac La Belle have basements; therefore this is not a unique condition to this property. In addition, there is a large area for storage above the garage. Further, it is not necessary to have 3,446 sq. ft. of living and storage space (not including the 1,068 sq. ft. of storage above the detached garage) in order to have a reasonable use of any property. Case law has repeatedly held that petitioners are not entitled to the "highest and best use" of a property, but only reasonable use. The owner has the opportunity to make reasonable use of this property by constructing either a smaller addition (approximately 471 sq. ft. rather than 898 sq. ft.) or by reducing the size of the large detached garage. The existing garage is 1,068 sq. ft. The owners could have their proposed 898 sq. ft. addition and still retain a 640 sq. ft. detached garage, which is larger than many lakefront property owners enjoy. As noted in the table above, the owners can have approximately 3,019 sq. ft. of living and storage space (not including the area above the garage) on this property without a variance. There are no unique conditions existing on this property that prevent compliance with Ordinance. Variances should only be granted to accommodate physical limitations on a property that prevent a reasonable use of the property; not to accommodate the personal preferences or needs of the current property owner. Staff feels, however, that it is reasonable to allow the variance from the 50% provision in order to allow a second story addition as long as it remains within the existing footprint and adheres to all other Ordinance requirements. It would be unnecessarily burdensome to deny this variance as the residence is in the most logical and conforming location on the property. As recommended, this provides a reasonable use of the property that is not unnecessarily burdensome and will permit an addition and remodeling to the

residence that is not detrimental to the surrounding neighborhood or contrary to the public interest and will also allow the owners to retain the patio. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA11:043 JAMES AND JUANA SCHROEDER (OWNERS) DONALD MURN (AGENT):

Mr. Day *I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bayer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the road setback requirements of the Waukesha County Zoning Code, to permit the installation of an entrance monument within the right-of-way of C.T.H. "X", subject to the following conditions:

1. The entrance gate shall be located as approved by the Town Plan Commission and Waukesha County Department of Public Works (40 ft. from the existing centerline of C.T.H. "X".)
2. Prior to the issuance of a Zoning Permit for the entrance monument, the applicant shall provide a copy of the required Revocable Occupancy Permit for the fence as recorded with the Register of Deeds, as required by the Waukesha County D.P.W. in their correspondence dated October 14, 2011.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The proposed entrance monument has been reviewed and approved by the Town Plan Commission and the Waukesha County Department of Public Works who have both certified that it will not restrict safe access and visibility of the intersecting drive and the road as required by the Code. Therefore, the approval of variances from the road setback requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA11:044 WAUKESHA STATE BANK (OWNER) ROBERT BUCHTA c/o OLIVER CONSTRUCTION COMPANY (AGENT):

Mr. Day *I make a motion to approve the requested variance from the maintenance and use of setback and offset areas requirements, and denial of the sign setback requirements, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of requested variance from the maintenance and use of setback and offset areas requirements, and **denial** of the sign setback requirements of the Ordinance with the following conditions:

1. All proposed signs must all conform to the road setback and offset requirements. All sign size and height requirements shall also be complied with.
2. The sign along C.T.H. "ES" near the proposed entrance drive must be located outside of the easement area.
3. All outdoor display areas must be kept 10 ft. from the edge of the right-of-way at all times and in all locations.
4. A Conditional Use Permit and Site Plan/Plan of Operation Permit must be approved by the Town of Vernon and Waukesha County prior to the issuance of a zoning permit for the sign.
5. If not already done, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Conditional Use Permit and Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. Variances should only be granted to provide the minimum relief necessary to obtain reasonable use of the property. This is a 10.4 acre property and therefore, there is no hardship to the petitioner in complying with all applicable district offset and setback requirements for the signs. Furthermore, it is not reasonable to allow a sign within an easement. The existing sign for the pre-existing business is very visible from the road.

A setback variance for the outdoor display areas, however, is justified for several reasons: the right-of-ways of National Avenue, Crowbar Road, and Interstate "43" are all very large and, as conditioned, the displays will be located 10 ft. outside of the right-of-way in all locations. This is the same required setback for parking and it seems reasonable to allow for the proposed display areas in the same location as parking would be permitted. Given that the display areas will be 60 feet from the edge of the pavement, they should not have any impact on the safe travel of any of these roads. As recommended, the proposal provides a reasonable use of the property that is not unnecessarily burdensome and will permit the petitioner to locate a new business on the property, while ensuring that it is not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA11:045 VERNON CONGR. JEHOVAH WITNESSES c/o BRETT ZYNSKI (OWNER)
TIM SEIDEL, ARCHITECT LLC (AGENT):**

Mr. Schmidt

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, with the following change to condition no. 1:*

Condition number 1 shall be amended to read: "The outbuilding and existing church building must be removed by September 1, 2012 unless extended by Planning & Zoning Division staff for good cause."

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the offset and conservancy setback requirements of the Waukesha County Zoning Code, to permit removal of the existing church building and outbuilding and construction of a new church facility on the existing foundation with a 10 ft. x 15 ft. footprint expansion for the storage of lawn equipment, subject to the following conditions:

1. The outbuilding and existing church building must be removed prior to proceeding with the new construction.
2. The new building must be constructed on the existing foundation of the current building, with the exception of the 10 ft. x 15 ft. addition as shown on the plans submitted to Waukesha County on November 15, 2011. No other expansion of the footprint is permitted.
3. Prior to issuance of a Zoning Permit for new building, the Conditional Use and Plan of Operation Permits must be issued.
4. Prior to the issuance of a Zoning Permit, three (3) complete sets of scaled construction plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, six (6) copies of the updated Plat of Survey showing the staked-out location of the proposed building and addition, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has been demonstrated, as is required for a variance that denial of the requested variances from the offset and conservancy setback provisions of the code would result in an unnecessary hardship. The existing structure was granted variances to be built in its existing

location and all parking and driveways were planned around this structure. The project as conditioned with also result in the removal of a very nonconforming outbuilding. Therefore the approval of this request, with the recommended conditions, provides a reasonable use of the property, is not unnecessarily burdensome, and will permit the construction of the requested church building that is not detrimental to the surrounding neighborhood or contrary to the public interest, and is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION: None.

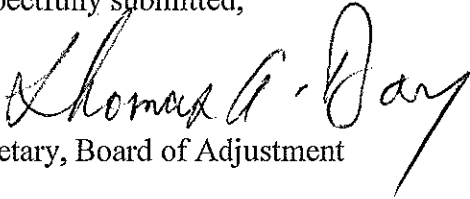
ADJOURNMENT:

Mr. Day

I make a motion to adjourn this meeting at 8:05 p.m.

The motion was seconded by Ms. Bonniwell and carried unanimously.

Respectfully submitted,

A handwritten signature in cursive script, reading "Thomas A. Day". The signature is written in dark ink and is positioned above the printed name of the signatory.

Secretary, Board of Adjustment